UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

GOLDEN SVCS, LLC,[1]

Employer,

and Case 05-RC-267669

UNION RIGHTS FOR SECURITY OFFICERS (URSO),

Petitioner,

and

GOVERNED UNITED SECURITY PROFESSIONALS (GUSP),

Intervenor,

and

INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA),

Intervenor.

DECISION AND ORDER

Union Rights for Security Officers (URSO) ("the Petitioner") filed the petition herein with the National Labor Relations Board ("the Board") under Section 9(c) of the National Labor Relations Act, as amended ("the Act"), seeking to represent a group of employees employed by Golden SVCS, LLC ("the Employer"). The Employer is engaged in the business of providing security services to the United States Government.

A hearing was held via videoconference on November 5, 2020 before a hearing officer of the Board.[2] As the parties stipulated, I find that the agreed upon unit set forth below ("the Unit") is appropriate for the purposes of collective bargaining:

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[1] The Employer's name appears as amended by stipulation of the parties.

[2] Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated the undersigned its authority in this proceeding. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings, made at the hearing, are free from prejudicial error and are hereby affirmed.

> ***Included:*** All full-time and regular part-time security officers employed by the Employer at the U.S. Department of Housing and Urban Development, currently located at 451 7th Street SW, Washington, DC 20410 and 425 3rd Street SW, Washington, DC 20024.
>
> ***Excluded:*** All office clerical employees, professional employees and supervisors as defined by the Act.

Furthermore, there is no dispute, and I find, that the employees in the petitioned-for unit are guards under Section 9(b)(3) of the Act. Additionally, I find, as stipulated by the parties, that the Petitioner, the Governed United Security Professionals (GUSP) ("Intervenor GUSP"), and the International Union, Security, Police and Fire Professionals of America (SPFPA) ("Intervenor SPFPA") are each qualified to represent the unit described in the petition and herein within the meaning of Section 9(b)(3) of the Act.

The issues involved in this proceeding surround whether the instant petition is barred by an agreement executed by the Employer and Intervenor GUSP that covers the petitioned-for employees. Intervenor GUSP contends that the agreement is effective and currently in-force and thus bars the instant petition. In contrast, Petitioner argues that the agreement is not a bar to the petition because, at the time the agreement was executed, Intervenor GUSP did not enjoy majority support amongst the petitioned-for employees.[3] Intervenor SPFPA additionally argues that the agreement contains an unlawful union-security clause, and thus the contract cannot serve as a bar. Finally, Intervenor SPFPA argues that it is inappropriate for me to consider the contract bar issue because neither the Employer nor Intervenor GUSP filed a statement of position or responsive statement of position raising the contract bar issue.[4] The parties provided their

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2. The parties stipulated, and I find, that the Employer is a limited liability company with an office and place of business in Oak Ridge, Tennessee, and is engaged in the business of providing security services at U.S. Department of Housing and Urban Development currently located at 451 7th Street SW, Washington, DC 20410 and 425 3rd Street SW, Washington, DC 20024. In conducting its operations during the 12-month period ending September 30, 2020, the Employer provided services valued in excess of $50,000 directly to customers located outside the State of Tennessee. During that same period of time, the Employer has conducted its operations within Washington, D.C.
3. I further find, as also stipulated by the parties, that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
4. The parties additionally stipulated, and I find, that the Petitioner and the Intervenors are all labor organizations within the meaning of the Act.
5. Petitioner is seeking to represent the employees in the unit described in the petition and herein, but the Employer declines to recognize Petitioner as the collective-bargaining representative of those employees.
6. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

[3] The Employer does not take a position on whether the agreement bars the instant petition.

[4] As will be discussed below, I find that the contract bar issue was appropriately raised and is before me for resolution. Additionally, at hearing, pursuant to my direction, Intervenor GUSP was prevented from raising any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue because it failed to file a statement of position pursuant to Section 102.66(d) of the Board's Rules and Regulations. I hereby affirm this ruling made on the record.

respective positions on the record, and while they were permitted to file post-hearing briefs, no briefs were filed.

For the reasons set forth below, and in accordance with extent legal authority, I find that the contract bar issue was appropriately raised, the agreement is valid and does not contain an illegal union-security clause, and the Petitioner's majority-status argument is inappropriate to be decided in this proceeding. Consequently, I find that the agreement serves to bar the processing of this petition. Accordingly, I dismiss the petition.

I. FACTUAL OVERVIEW

The Employer employs approximately 78 employees in the petitioned-for unit, all of whom work at two U.S. Department of Housing and Urban Development ("HUD") buildings in Washington, DC. On February 15, 2019, Watkins Security Agency of DC, Inc. ("Watkins") entered into a collective-bargaining agreement ("Agreement") with Intervenor GUSP, effective through February 14, 2022, covering the petitioned-for employees who worked at the same two HUD buildings where they are currently staffed for the Employer. In about April 2020,[5] the Employer was awarded the prime contract to provide the services that were, at that time, being provided by Watkins at the two HUD locations.

Following its award of the aforementioned prime contract, the Employer and Intervenor GUSP began negotiations. The negotiations culminated in a bridge agreement ("Bridge Agreement), entitled Agreement to Assume Collective Bargaining Agreement, which was fully executed on August 10. In the Bridge Agreement, the Employer, among other things, recognized Intervenor GUSP as the bargaining agent for the Unit, and agreed to assume the Agreement subject to modifications contained within the Bridge Agreement.

The Agreement contains a union-security provision, relevant sections of which are quoted below:

ARTICLE II: MEMBERSHIP AND DUES CHECK-OFF

Section 1: Definition

a. All Employees who are members of the Union on the effective date of this Agreement, or voluntarily join hereafter, shall maintain their membership or satisfy the financial obligations set by the Union in accordance with the applicable law during the term of this Agreement as a condition of continued employment. All Employees covered by this Agreement who are not members of the Union and choose not to become members of the Union shall, as a condition of continued employment, pay to the Union an agency fee as established by the Union, consistent with applicable law.

[5] Hereinafter, all dates occurred in 2020, unless otherwise noted.

b. All Employees hired after this effective date of this Agreement shall, within ninety (90) working days, become members or agency fee payers as a condition of continued employment for the duration of this Agreement, consistent with applicable law.

c. The Employer shall be obligated under this Article to terminate the employment of any Employee by reason of his/her failure to comply with Section (a) above upon receipt of a thirty (30) days advance written request from the Union, provided that, upon receipt of such written request by the Employer, the Employee shall have fourteen (14) days to tender the amounts owed and thereby avoid termination of his/her employment and provided further that the Union has provided the Employer with written proof that it has complied with its legal obligations concerning notification to the Employee of the delinquency and notification to the Employee of his or her statutory rights relating to union security, including subsection (d) below, unless otherwise provided by applicable law.

d. An Employee who elects not to become a member of the Union or maintain membership in the Union during the term of the Agreement will pay an agency fee to the Union rather than pay the dues amount. Such agency fee shall reflect an amount that is proportionately commensurate with the costs to the Union of collective bargaining and contract administration and Union financial core fees, as defined by the U.S. Supreme Court in NLRB v. General Motors, 373 U.S. 734 and Beck v. Communications Workers of America, 487 U.S. 735.

The modifications to the Agreement listed in the Bridge Agreement did not modify the union-security provision quoted in relevant part above.

The Employer began operations pursuant to the prime contract on August 1. At the time that it began operations, the record reflects that the Employer employed 47 employees in the Unit, 16 of which were formerly employed by Watkins. As of the hearing date, the Employer employs approximately 78 employees in the Unit, 27 of which were formerly employed by Watkins.

II. POSITIONS OF THE PARTIES

The Petitioner maintains that the Agreement cannot act as a bar to the processing of this petition because, at the time the Agreement was assumed by the Employer, Intervenor GUSP did not have majority support of the Unit. In support of Petitioner's position, the record reflects that, at the time it commenced operations, only 16 of 47 employees in the Unit were employed by the predecessor, Watkins. As of the date of the hearing, the Unit is comprised of approximately 78 employees, only 27 of which were formerly employed by Watkins. Because the Unit has never

been comprised of a majority of the predecessor's employees, as a consequence Intervenor GUSP has never enjoyed majority support amongst the Unit. Thus, Petitioner argues the Agreement is not valid and does not bar this petition.

In addition to the arguments made by Petitioner, Intervenor SPFPA raises two challenges to the bar status of the Agreement. To begin with, Intervenor SPFPA contends that the union-security clause—quoted in relevant part above—illegally fails to provide non-member incumbent employees (employed at the time the Agreement became effective) the statutorily required 30-day grace period. Thus, because the Agreement contains an illegal union-security clause, the Agreement cannot serve as a bar to a petition. Second, Intervenor SPFPA asserts that it is inappropriate for me to even consider the contract bar issue, and the issue is even precluded from being raised, because neither the Employer nor Intervenor GUSP raised the contract bar issue in either a statement of position or a responsive statement of position.

Finally, Intervenor GUSP argues that the Agreement does bar the petition. In support of its position, Intervenor GUSP maintains that it had achieved majority support at the time the Agreement was assumed by the Employer, and the Bridge Agreement was executed in a timely manner. Thus, it argues, the Agreement bars this petition.

III. APPLICABLE BOARD LAW

The Board's well-settled contract bar doctrine attempts to balance often-competing aims of employee free choice and industrial stability. See, e.g. *Seton Medical Center*, 317 NLRB 87, 88 (1995). When a petition is filed for a representation election among a group of employees who are alleged to be covered by a collective-bargaining agreement, the Board must decide whether the agreement meets certain requirements such that it operates to serve as a contractual bar to the further processing of that petition. See *Hexton Furniture Co.*, 111 NLRB 342 (1955). In order to act as a bar, a collective-bargaining agreement must contain substantial terms and conditions of employment to which parties can look for guidance in resolving day-to-day problems. *Appalachian Shale Products Co.,* 121 NLRB 1160 (198). The burden of proving that a contract is a bar is on the party asserting the doctrine. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970).

An unlawful union-security clause in an otherwise in-force collective bargaining agreement will render that agreement incapable of barring a representation petition. "A clearly unlawful union-security provision for this purpose is one which by its terms *clearly and unequivocally* goes beyond the limited form of union-security permitted by Section 8(a)(3) of the Act, and is therefore incapable of a lawful interpretation." *Paragon Products Corp*., 134 NLRB 662, 666 (1961)(emphasis added).[6] Unlawful union-security provisions include those which

[6] Section 8(a)(3) of the Act, in relevant part, states: "[t]hat nothing in this Act [subchapter], or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, which is the later . . ." 29 U.S.C. § 158(a)(3).

"specifically withhold from incumbent nonmembers and/or new employees the statutory 30-day grace period to comply with an otherwise-lawful union security clause (see Section 8(a)(3) of the Act)". *Paragon Products Corp*., 134 NLRB at 666. Moreover, a contract entered into in violation of Section 8(a)(2) of the Act is not a bar to a petition. *Carlson Furniture Industries, Inc.*, 157 NLRB 851 (1966).

Importantly, the union-security clause must be clearly unlawful, as "[c]ontracts containing ambiguous though not clearly unlawful union-security provisions will bar representation proceedings in the absence of a determination of illegality as to the particular provision involved by the Board or a Federal court pursuant to an unfair labor practice proceeding." *Paragon Products Corp*., 134 NLRB at 667. Thus, extrinsic evidence cannot be used to establish the illegality of the union-security provision—"[n]o testimony and no evidence will be admissible in a representation proceeding, where the testimony or evidence is only relevant to the question of the practice under a contract urged as a bar to the proceeding." *Id*.

Finally, established Board policy dictates that unfair labor practice allegations are not properly litigable in a representation proceeding. In several cases where the bar status of a collective-bargaining agreement turned on whether the agreement was entered into in violation of Sections 8(a)(2), 8(b)(1)(A), and 8(b)(2), the Board found that the representation case was not the appropriate venue for making such a determination, but instead those issues needed to be properly litigated in an unfair labor practice proceeding. See *Town & Country*, 194 NLRB 1135, 1135-1136 (1972); *Mistletoe Express Service*, 268 NLRB 1245, 1247 (1984).

IV. ANALYSIS

1. I am permitted to consider the contract bar issue raised in this proceeding.

According to Section 102.64(a) of the Board's Rules and Regulations ("Rules and Regulations"), "[t]he primary purpose of a hearing conducted under Section 9(c) is to determine if a question of representation exists." "A question of representation exists if a proper petition has been filed concerning a unit appropriate for the purpose of collective bargaining or concerning a unit in which an individual or labor organization has been certified or is being currently recognized by the employer as the bargaining representative." *Id*. Furthermore, "it shall be the duty of the Hearing Officer to inquire fully into all matters and issues necessary to obtain a fully and complete record upon with the board or the Regional Director may discharge their duties under Section 9(c) of the Act", subject to the provisions of Section 102.66. *Id*. at Section 102.64(b). At hearing, even though the Rules and Regulations proscribe a Hearing Officer from receiving evidence concerning any issue as to which parties have not taken adverse positions, according to Section 102.66(b), that proscription does not "limit the Regional Director's discretion to direct the receipt of evidence concerning any issue . . . as to which the Regional Director determines that record evidence is necessary."

I find that the contract bar issue was appropriately raised as an issue in this proceeding, parties have taken adverse positions with respect to that issue, and it is within my duties as the

Regional Director to make a determination as to that issue. In its statement of position, the Employer remarked that it would not take a position as to whether the Agreement barred this petition, which on its face shows that it covers the petitioned-for unit; by making that statement and attaching the Agreement to its statement of position, the Employer certainly raised as an issue whether this petition is barred by the Agreement. Moreover, the Petitioner filed a responsive statement of position challenging whether there is a bar to this election. While Petitioner claims there is no dispute regarding whether this petition is barred, Petitioner raised a substantive challenge to the Agreement's bar status, i.e. that the Employer did not employ a majority of the predecessor's workforce, thus questioning the validity of the Agreement. Petitioner cannot rightfully claim that there is no dispute as to whether the Agreement bars this petition when it is levying a substantive challenge as to why the Agreement does not bar the petition.

I find that the issue as to whether the Agreement bars further processing of this petition has been properly raised, and as noted above, the parties take adverse positions on this issue. It is within my right, pursuant to Section 102.6(d) of the Rules and Regulations, to direct that evidence be taken regarding this issue. Consequently, I conclude that it is not only appropriate for me to consider the bar status of the Agreement, I am required to resolve this issue.

2. The Agreement does not contain an union-security clause that is clearly unlawful.

As extent Board law requires, I must examine the terms of the Agreement "as they appear within the four corners of the instrument itself" in assessing whether it retains its status as a bar to the instant petition. *Jet-Pak Corporation*, 231 NLRB 552, 553 (1977). There is no contention that the Agreement, outside of the challenges raised above, is defective or does not conform to the Board's requirements that define a lawful contract (i.e. that the Agreement does not contain substantial terms and conditions of employment, etc.).[7] Thus, in examining the Agreement, the issue raised by Intervenor SPFPA for me to decide is whether the Agreement's union-security clause withholds from incumbent non-member employees the statutory 30-day grace period before they can be subject to the clause. After careful review of the Agreement, the record, and extent legal authority, I find that the Agreement does not contain a union-security clause that is so clearly unlawful as to render the Agreement incapable of serving as a bar.

According to Intervenor SPFPA, the Agreement's union-security clause does not provide incumbent non-member employees and who choose not to become members of Intervenor GUSP, the 30-day grace period that is required by the Act with respect to enforcing the union security provision on employees. In other words, employees who were employed as of the

[7] The Agreement requires members of Intervenor GUSP at the time the contract became effective, and those employees that voluntarily join thereafter, to maintain their membership or satisfy the financial obligations set by Intervenor GUSP in accordance with the applicable law as a condition of continued employment. Further, the Agreement affords employees hired after the effective date of the contract a 90-working-day grace period prior to the union-security provision being applied to them. No party to this proceeding has challenged these sections, and I find that these portions of the union-security provision do not run afoul of the Act.

effective date of the Agreement and who were not members of Intervenor GUSP or who chose not to become a member, are not afforded the requisite 30-day grace period. Therefore, according to Intervenor SPFPA, because the Agreement contains an unlawful union-security clause, it loses its bar status to block further processing of this petition. For the reasons that follow, I do not agree.

According to Article II, Section 1(a) of the Agreement, "…[a]ll employees covered by this Agreement who are not members of [Intervenor GUSP] and choose not to become members of [Intervenor GUSP] shall, as a condition of continued employment, pay to [Intervenor GUSP] an agency fee as established by [Intervenor GUSP], consistent with applicable law." I recognize that the Agreement does not detail a specific grace period within this subsection, during which Section 1(a) would not apply to incumbent employees who are not members of Intervenor GUSP and who choose not to become members. However, failing to enumerate a specific grace period within that subsection of Article II, Section 1 does not equate to "specifically withhold[ing]" the statutory grace period as proscribed by law. See *Paragon Products Corp*., supra.

Article II, Section 1(c) directs the Employer to terminate an employee who does not comply with the requirements of Section 1(a) only after Intervenor GUSP has provided the Employer with a 30-days advance written request to terminate the non-compliant employee. In effect, then, incumbent non-member employees and those that chose not to join Intervenor GUSP were not subject to the union-security provision—at the earliest—until after the passing of 30 days following the effective date of the Agreement, because a 30-day advanced written notice is required before the Employer can terminate a non-compliant employee. While Article II, Section 1(a) may not specifically detail a grace period prior to which the union-security provision would not apply to non-member employees, I find, for the foregoing reasons, that the Agreement does not "specifically withhold" the statutory 30-day grace period.

Mountaire Farms, Inc., Case 05-RD-256888, Decision and Direction of Election (April 8, 2020),[8] where I found that the involved union-security clause was illegal and could not serve as a bar, serves as a useful example to highlight the distinction between a union-security clause that specifically withholds the statutorily required grace period and one, such as the clause in the Agreement in this case, that does not. In *Mountaire*, I found that the involved union-security clause was incapable of a lawful interpretation, and facially invalid, because it specifically withheld from nonmember incumbent employees the statutorily mandated 30-day grace period. The union-security clause in *Mountaire* required all employees who were not members of the involved union as of the execution date of the contract, to become union members on or after the thirty-first day *following the beginning of their employment*. Thus, for any non-member incumbent employees who began their employment prior to the execution date of the contract, the 31st day following the beginning of their employment—after which they would be subject to the union-security clause—would occur prior to the finish of the statutory 30-day grace period, which would end 30 days following the execution of the agreement. For this reason, I found that

[8] This matter is currently pending before the Board on a request for review and the Board's subsequent notice and invitation to file briefs. See *Mountaire Farms, Inc.*, unpublished opinion, 2020 WL 3840342 (2020).

the union-security clause clearly and specifically withheld the statutorily required 30-day grace period.

In contrast, the union-security clause in the Agreement here is capable of a lawful interpretation—as illustrated above—as it does not specifically withhold the statutory 30-day grace period. While Intervenor SPFPA is right that the grace period is not detailed in Article II, Section 1(a), a reading of the entire union-security provision shows nonmember incumbent employees are not subject to the provisions of Section 1(a) until a 30-days advance written request is made to the Employer, and thus are afforded a 30-day grace period to comply with the union-security provisions.

I find that the union-security provision in the Agreement is capable of a lawful interpretation, and at worst is ambiguous. As the Board has said, however, "[c]ontracts containing ambiguous though not clearly unlawful union-security provisions will bar representation proceedings in the absence of a determination of illegality as to the particular provision involved by the Board or a Federal court pursuant to an unfair labor practice proceeding." *Paragon Products Corp*., 134 NLRB at 667. There is no evidence in the record that the Board or a Federal court has found this union-security clause to be unlawful. An ambiguous, or not clearly unlawful, union-security clause does not remove as a bar to a petition an otherwise lawful and valid collective-bargaining agreement.

For the foregoing reasons, I find that the union-security clause in the Agreement is not clearly unlawful, and does not prevent the Agreement from acting as a bar to this petition.

3. Petitioner's majority-status argument is not appropriate for determination in this proceeding and must be denied.

As noted above, Petitioner argues, with support from Intervenor SPFPA, that the record here establishes that Intervenor GUSP did not enjoy majority support at the time the Employer and Intervenor GUSP entered into the Bridge Agreement. According to Petitioner, the Employer admits that at the time it began operations on August 1, a majority of the employees employed in the Unit were not formerly employed by the predecessor, Watkins. As such, Intervenor GUSP did not enjoy majority support amongst Unit employees, and thus the Agreement was not appropriately entered into and cannot serve as a bar to this petition. While I acknowledge that the record reflects that the Employer does not now, nor at any time since beginning operations, employ as a majority of its Unit employees that worked for Watkins, I must deny the Petitioner's challenge for the reasons that follow.

It is established Board policy "that unfair labor practice allegations are not properly litigable in a representation proceeding." *Town & Country*, 194 NLRB at 1136. In *Town & Country*, the Board was tasked with deciding whether a collective-bargaining agreement could serve to bar a petition for representation. The petitioner in that case argued that the agreement could not serve as a bar because it was entered into in violation of Section 8(a)(2) and 8(b)(1)(A)

and 8(b)(2). *Id*. In addition to making that argument in the representation proceeding, the petitioner also filed unfair labor practice charges making the same allegations. According to the Board, "the contract between the Employer and the Intervenor constitutes a bar to this proceeding unless the Employer's recognition of the Intervenor as the collective-bargaining agent was itself unlawful and a violation of Section 8(a)(2) and 8(b)(1)(A) and (2) of the Act." *Id*. It continued, "[t]o make such a determination in this case would be contrary to established Board policy that unfair labor practice allegations are not properly litigable in a representation proceeding. A party asserting such allegations may litigate them only in an unfair labor practice proceeding designed to adjudicate such matters." *Id*. Consequently, the Board denied the petitioner's request to proceed, and remanded the case to the Regional Director to be held in abeyance until the unfair labor practice charges were resolved. *Id*.

Likewise, in *Mistletoe Express Service*, 268 NLRB 1245 (1984), the Board also declined to resolve, in a representation proceeding, allegations that should have been adjudicated in an unfair labor practice proceeding. As in *Town & Country*, the Board was presented with a collective-bargaining agreement that "may constitute a bar to the representation case proceeding unless the Employer and the Intervenor have engaged in conduct violative of Section 8(a)(1) and (2) and Section 8(b)(1)(A) of the Act." *Mistletoe Express Service*, 268 NLRB at 1247. However, petitioner had also filed pending unfair labor practice charges alleging that the employer in that case had provided unlawful assistance to the intervenor, that it granted recognition to the intervenor at a time that the intervenor did not represent a majority of unit employees, and that the actions of both the employer and the intervenor violated Sections 8(a)(1) and (2) and 8(b)(1)(A). *Id*. Accordingly, the Board found that petitioner must litigate the underlying allegations in the appropriate venue—the unfair labor practice proceeding—and as such declined to resolve those issues in the representation case proceeding. *Id*. As it did in *Town & Country*, the Board denied the petitioner's request to proceed, and remanded the case to the Regional Director to be held in abeyance until the unfair labor practice charges were resolved. *Id*.

In this case, the Petitioner's argument that the Agreement does not bar the instant petition because the Intervenor GUSP did not enjoy majority support amongst Unit employees at the time the Agreement was entered into, and at the time the Employer began operations, amounts to allegations that the Employer and Intervenor GUSP violated Sections 8(a)(2), 8(b)(1)(A) and (8)(b)(2), respectively. The impact of the Petitioner's allegations are that the Employer unlawfully granted recognition to Intervenor GUSP at a time when it did not enjoy majority support. These are allegations that, if proven true, would result in findings that the Employer and Intervenor GUSP violated Sections 8(a)(2), 8(b)(1)(A) and 8(b)(2), respectively. Indeed, Petitioner's arguments amounts to a challenge to the validity of the Agreement because it was entered into by the Employer and Intervenor GUSP at a time when Intervenor GUSP was not the majority representative of the Unit, and is thus invalid. Extent law requires these allegations to be pursued and litigated in an unfair labor practice proceeding, not in this representation proceeding.

As the allegations that the Employer and Intervenor GUSP entered into the Bridge Agreement at a time when Intervenor GUSP did not enjoy majority support amongst Unit employees are not properly before me, I must deny Petitioner's challenge to the bar status of the Agreement on those grounds.[9]

V. CONCLUSION AND ORDER

Based on the record in front of me, as discussed in detail above, I conclude that the evidence supports a finding that Intervenor GUSP has met its burden in establishing that the Agreement acts as a bar to further processing this petition. Accordingly, it is hereby ordered that the petition in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations you may obtain a request for review of this Decision by filing a request with Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67 (d) and (e) of the Board's Rules and Regulations and must be filed by **December 7, 2020**.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden.[10] A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case

[9] In *Town & Country* and *Mistletoe Express Service*, the Board remanded the petitions to the respective Regional Directors to hold the matters in abeyance pending resolution of the contemporaneously filed unfair labor practice charges. Here, there is no evidence that unfair labor practice charges have been filed against the Employer or Intervenor GUSP, thus this matter cannot be held in abeyance pending resolution of the same. However, should future charges be filed against the Employer or Intervenor GUSP challenging the lawfulness of the bargaining relationship, and those charges result in the Agreement being found invalid and unlawful, the challenge to the Agreement's bar status can be appropriately raised in a representation proceeding at that time.

[10] On October 21, 2019, the General Counsel (GC) issued Memorandum GC 20-01, informing the public that Section 102.5(c) of the Board's Rules and Regulations mandates the use of the E-filing system for the submission of documents by parties in connection with the unfair labor practice or representation cases processed in Regional offices. The E-Filing requirement went into immediate effect on October 21, 2019, and the 90-day grace period that was put into place expired on January 21, 2020. Parties who do not have necessary access to the Agency's E-Filing system may provide a statement explaining the circumstances, or why requiring them to E-File would impose an undue burden.

Number, and follow the detailed instructions. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Issued at Baltimore, Maryland this 20th day of November, 2020.

(SEAL)

/s/ Sean R. Marshall

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